IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.

Second Appeal No. 574/2001
(Old No. 219/1987)

1- The State of U.P. through Collector,
Dehradun.
2- The Gram Sabha Bharuwala Grant,
Pargana Central Doon, Tehsil Dehradun
District Dehradun …..Defendants/Appellants.

Vs.

1- Lt. Col. Beginal Greene, S/o L.E. Greene
R/o Will Mill Cottage, P.O. Clement Town,
District Dehradun.
2- Mr. M.A. Lawrance, S/o S.S. Lawrence
R/o 15, Ircland situate at 36, Dritwapur Road,
Lal Kuan, District Lucknow.
3- Mr. F.A. Lawrance, S/o Mr. S.S. Lawrence
R/o 15 Ircland Marg, Bassandeen, Western
Australia-6054.
4- Mr. V.L. Lawrence S/o Mr. S.S. Lawrence
R/o 126, Hill Rice Green Ford Middle England
No. 2 to 4 through their attorney plaintiff No.1.
5- Mr. Lorna Greene, widow of Late Ltd. Conl.
Reginald Greene, R/o Will Mill Cottage,
Clement Town,
District Dehradun ….Plaintiffs/Respondents.

Sri J.P. Joshi, learned Standing Counsel for the appellant.
Sri Lokendra Dobhal, learned counsel for the respondents.

(Hon'ble B.C. Kandpal, J.)

This Second Appeal, U/S 100 C.P.C., has been preferred by the defendants, against the judgment and decree dated 10-10-1986, passed by Additional District Judge, Dehradun, in Civil Appeal No. 04 of 1980, dismissing the appeal and affirming the judgment and decree dated 31-10-1979 passed by the Civil Judge, Dehradun in original suit No. 169 of 1976 Lt. Col. Reginald Greene and others Vs. The State of U.P. and another.

2- Brief facts giving rise to this second appeal, are that the plaintiffs/respondents filed a suit for declaration and permanent injunction against the defendant/appellants with the allegations that a society named "Anglo Indian and Domiciled European Co-operative Society Limited Clement Town, Dehradun" acquired extensive lands

in many villages including Majra and Bharuwala. The society demarcated the housing plots and allotted them on the basis of perpetual lease terms to its share-holders. Mr. And Mrs. S.S. Lawrence were also the members of the said society. Two plot nos. 42 and 50 khasra plot nos. 481 and 483 measuring 10 bighas were demised to Mr. & Mrs. Lawrence. These plots originally comprised of the holding of Bharuwala Grant, Mahal G.E. Powell District Dehradun and were transferred to them vide sale deed dated 12-6-1940. Mr. & Mrs. Lawrence were in-laws of plaintiff Lt. Col. Reginald Greene and parents of other plaintiffs. After purchase of land Mr. & Mrs. Lawrence constructed house on Khasra no. 483 and the said house with the land of the other plot being appurtenant thereto remained in continuous occupation until their death. After the death of Mr. Lawrence in the year 1953, Mrs. Lawrence inherited her husband's share and became the sole and exclusive owner of both the plots. When she too became old, she executed a will dated 6-10-1964 and bequeathed thereby these plots to the plaintiffs. Mrs. Lawrence expired in the year 1965. By virtue of the will both the plots devolved upon the plaintiffs and eventually they became the absolute owners. The plaintiffs also inherited the share of their brother Mr. W.S. Lawrence who died on 2.10.1974. The plaintiffs incurred heavy expenditures in developing the abadi area and also made additions, alterations and modifications over the residential houses and the land appurtenant thereto. This property was named by them as "Will Mill Cottage". It is further alleged by the plaintiffs that somehow the revenue authorities wrongly recorded the Khasra plot Nos. 481 and 483 as "Banjar land" in the revenue records instead of showing it as abadi site of the plaintiffs. Consequent upon the defendants started claiming this property to be of Gram Sabha, Bharuwala. Plaintiffs served notice on defendants and protested their title in the property, but when it did not bear any fruit, the plaintiffs filed suit. The main contention of the plaintiffs was that the land of the plots having been once acquired by a housing society for the purpose of housing scheme was exempt form the provisions of U.P. Z.A. & L.R. Act, 1951 and therefore, there was no question of the disputed land having

vested in Gram Sabha under the provisions of Section 6 of the said Act.

3- The defendants jointly contested the suit and filed W.S. They allged that the notice U/S 80 C.P.C. was invalid; the civil court had no jurisdiction to hear the matter in dispute and the Gram Sabha, Bharuwala was the owner of both the plots in view of the sites of both these plots being recorded as “Bajnar land” in the revenue records. The land would be deemed to have settled with the Gram Sabha under the provisions of Section-6 of the U.P. Z.A. & L.R. Act. It was also pleaded that since the land in question could not be held by the housing society and U.P.Z.A.&L.R. Act was applicable to it, the sale deed in favour of Mr. & Mrs. Lawrence was illegal and void.

4- On the pleadings of the parties, the following issues were framed by the trial court:-

1- Whether the plaintiffs are the owners of the disputed land?.
2- Whether the disputed land had not vested in the State and settled with Gram Sabha under the provisions of U.P. Z.R. & L.R. Act?.
3- Whether the notice to quit U/S 80 C.P.C. is illegal?.
4- Relief?.

5- Parties adduced evidence in support of their cases. The trial court, after having perused the material on record and hearing learned counsel for the parties, decreed the suit of the plaintiffs for declaration to the effect that they are the absolute owners of the land in dispute and also for permanent injunction restraining the defendants from interfering or disturbing the possession of the plaintiffs over the land in dispute.

6- Feeling aggrieved, the defendants preferred appeal before Additional District Judge, Dehradun, who vide impugned judgment and decree dated 24-9-1986/10-10-1986, dismissed the appeal and confirmed the judgment and decree passed by the trial court.

7- Against the aforesaid impugned judgment and decree, the defendants/appellants preferred the second appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

8- The second appeal was admitted on the two substantial questions of law. It appears that due to some inadvertence, in the substantial question of law No.1, the word “Specific Relief Act” has been typed over the memo of appeal, whereas it should have been the word “Land Revenue Act”. Hence the substantial questions of law in the instant appeal are as follows:-

1- Whether the suit of the plaintiff is barred by Section 34 of the Land Revenue Act?.
2- Whether in absence of any relief against the order of the revenue court, ordering, eviction of the plaintiff to non executable impugned decree could have been passed?.

9- Heard learned counsel for the parties and perused the record.

10- The first issue to be adjudicated in this appeal is whether the suit of the plaintiff is barred by Section 34 (5) of the Land Revenue Act?. The learned counsel for the appellant has submitted that since the plaintiffs or their predecessors did not report to the Tehsildar concerned about their acquired rights of succession in the land in suit, the suit of the plaintiff was liable to be dismissed.

11- I do not find any substance in the submission raised by the learned counsel for the appellants.

12- Section 34(5) of the U.P. Land Revenue Act, 1901, provides that no court shall entertain a suit or an application by the person or succeeding or otherwise obtaining possession until such person has made the report required by this section. In the instant case the plaintiffs and their predecessors had acquired title over the abadi land much before the date of vesting and no cause of action had arisen

prior to the date of vesting. The provisions of sub-section (5) of Section 34 apply only if the cause of action arose after the date of vesting and not before. Further the suit was filed in a civil Court and not in the revenue court. Accordingly the provisions of Section 34(5) of the Land Revenue Act do not apply in the present case.

13- Further Section 143 of the U.P. Z.A. & L.R. Act which provides that a Bhumidhar using his holding for any purpose other than agriculture will inform it and the Assistant Collector would make a declaration to that effect, is also not applicable in the instant case as the Act itself is not applicable here.

14- So far as in the instant case, applicability of provisions of U.P. Z.A. & L.R. Act, is concerned, the plaintiff's contention is that the land in question was acquired for housing scheme for U.P. Anglo Indian and Domiciled European Co-operative Society Limited, Clement Town, Dehradun and it was obviously for public purpose, therefore, it was exempt from the operation of the U.P. Z.A. & L.R. Act, in view of Section 2(1)(c) of the Act.

15- Clause (c) of sub-section (1) of Section-2 of the Act provides that the land occupied for a public purpose or a work of public utility shall be exempt from the operation of the Act.

16- Further explanation of sub-section-2 of section-2 of the Act, suggests as follows:-

> "Any area held on the seventh day of July, 1949, for the purposes of a housing scheme by a co-operative society registered under the Co-operative Societies Act, 1912, or a society registered under the Societies Registration Act, 1860, or a limited liability company under the Indian Companies Act, 1913 shall be deemed to be held for a work of public utility."

17- In view of the aforesaid provisions, the land occupied for public purpose or a work of public utility shall be exempt from the operation of the U.P. Z.A. & L.R. Act. It is also clear that the land

acquired by the U.P. Co-operative Societies Act, 1912 are deemed to be an area held for a work of public utility. The relevant date is 7th day of July, 1949.

18- The burden of the plaintiffs was to prove that the disputed land was held by the Cooperative Society on 7th day of July, 1949. In order to discharge their burden, the plaintiffs brought on record the lease deeds and sale dees of the cooperative society. The Anglo Indian and Domiciled European Cooperative Society Ltd., in order to settle persons, acquired vast areas of lands in villages Bharuwala Grant, Telpura, Neemawala and Majra. The land was demarcated in different small plots- 5 to 10 bighas each. One father 'Clement' had established the society and the area covered by the society was commonly known as "Clement Town" area. A perusal of the bye-laws (Ex.Ka.9) reveal that the aforesaid society was registered on 3rd April, 1935. The object of the society was to organize and develop a residential colony on co-operative line in Clement Town in District Dehradun. P.W.1, A.A. Lunn, who was cross-examined on his affidavit, has proved that the land in dispute belonging to Lt. Col. Greene, his wife and his brother-in-law is situated in the area of Anglo Indian and Domiciled European Co-opertive Society Lt. founded by father "Clement" in the year 1935. He has further proved that the said society was developed for the purpose of rehabilitation of Anglo Indian and Domiciled European and service roads were made, houses were constructed by the members and later on electricity and water lines were installed and the entire area was developed as a residential colony well before 1952. He has further proved that Mr. & Mrs. Lawrence, the predecessors of the plaintiffs were members of the society and on having acquired the land in dispute, they had constructed a bungalow and servant quarters thereon. The open piece of land was used for cultivation. The said land never remained as "Banjar" or without cultivation. P.W2, Lt. Col. Reginald Greene is the brother-in-law and attorney of the other plaintiffs. This witness testified that in year 1940 he was in Dehradun and his father-in-law purchased the land in dispute from the Anglo Indian and Domiciled European Cooperative Society Lt. In the year 1940. He has proved

the sale deed dated 10-6-1940 registered on 14-6-1940, executed by the society in favour of father-in-law of this witness. The society plot Nos. 42 and 50 which are in dispute were transferred to Mr. & Mrs. Lawrence by means of the above sale deed. This witness further deposed that his parents constructed a house and the entire land in dispute was appurtenant to the said house. Some servant quarters were also constructed thereon and all the constructions were made by contractor Asgar Ali. Plaintiffs also filed agreement, paper No. 62/A1 executed by the contractor Asgar Ali, agreeing to construct the house on the land in suit for Mr. & Mrs. Lawrence.

19- It is relevant to note here that although initially the land was demised on the basis of perpetual lease, yet following the dissolution of the housing society on 22-8-1949, Mr. & Mrs. Lawrence became the absolute owner of these plots and the title thereafter continued to devolve upon the successor. The constructions of the house and servant quarters were raised long before the U.P.Z.A.& L.R. came into force in the year 1952. After the death of Mr. Lawrence, his wife Mrs. Lawrence acquired the absolute ownership of the plot Nos. 42 and 50 and by virtue of will dated 6-10-1964 (paper No. 52A/1) Mrs. Lawrence transferred these plots to the plaintiffs by making her won demarcation with measurements.

20- The evidence of Nakli Ram, who was Lekhpal in the village in the year 1977 to 1978, is of no relevance as admittedly he had no knowledge about the nature of the disputed land, whether it was agricultural land or a ‘Banjar land’. This witness also admitted that the disputed land is situated in abadi area and the plaintiffs who are the owners of the house on the disputed land are in its possession. As the disputed land is in the ownership and possession of the plaintiffs and their ancesters from long before the operation of U.P. Z.A. & L.R. Act, the entries in the Gram Sabha Sampati Register and Khasra Khatani regarding ‘Banjar Land’, have no relevance. No Khasra and Khatauni showing the land as “Banjar” prior to the date of vesting has been produced. Mere an entry in the Khasra and Khatauni is not

enough to dislodge the abadi character of the land which has emerged out to be so more than a decade or so before the date of vesting.

21- The plaintiffs/respondents have been able to prove that the housing society had acquired the land in question and allotted it for residential purpose to Mr. & Mrs. Lawrence in the year 1940, i.e. more than a decade before the Z.A.& L.R. Act came into force. So, even if it is accepted that the land in question was not under cultivation, the Act would not apply to it as the land had already been converted into an abadi area. Further it is significant to note that by virtue of a Notification published in U.P. Gazette Extra Ordinary dated July 1, 1952 “Revenue (A) Department (No. 4093/I-A-450/1951) the U.P. Govt. exempted the land held for the purpose of housing scheme by a cooperative society from the operation of the Act.

22- In view of above, I hold that the plaintiffs/respondents have been successful in establishing their ownership and possession over the disputed land and the provisions of U.P.Z.A.R. & L.R. Act and U.P. Land Revenue Act are not applicable in the instant case. Both the courts below have dealt with the issues in detail and have recorded concurrent findings of facts and I find no illegality and incorrectness in the findings of both the courts below. The substantial questions of law framed in the appeal have no substance and are answered against the defendants/appellants.

23- For the reasons recorded above, the appeal lacks merit and is liable to be dismissed.

24- Accordingly the appeal is dismissed. The judgments and decrees passed by both the courts below are affirmed. No order as to costs.

(B.C. Kandpal, J.)

Dated: 12-12-2006

ISB